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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,410

11/12/2003

Jerry Joe Wolfe JR.

TRIPLE.000010

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08/11/2008

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SUITE 2110

AUSTIN, TX 78759

EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

08/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/706,410	Applicant(s) WOLFE ET AL.	
	Examiner Kimberly S. Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 15-17, 19, 20, 27, 30, 31, 33-38 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 15-17, 19, 20, 27, 30-31, 33-38, 40-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>05/23/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/23/08 has been entered.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

3. The information disclosure statement filed 05/23/08 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3644

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13, 16, 17, 20, 27, 30, 31, 34, 36-38 and 40-43 are rejected under 35

U.S.C. 102(b) as being anticipated by Wang, US Patent 6,073,581.

6. Wang discloses a treat ball comprising a spheroidal outside (Figure 1), an interior compartment (Figure 2) with a first aperture (33, 43) on the outer extent of a space offset from the center location within the treat ball in which a removable dome-shaped outer surface cap (26) is removeably retained and a second aperture (14).

7. Regarding claims 41 and 42, Wang discloses a dimension of the space spaced apart from the aperture (i.e. the area bounded by 34, 44 and 37, 47) being parallel to the plane in which the aperture is located is greater than the maximum dimension of the aperture (34, 44).

8. Regarding claims 40, 20 and 17, Wang discloses a wall comprised of two flaps (37, 47) separating the aperture and the interior compartment having an opening (40, 51) for moving treats between the interior compartment and the aperture, wherein the wall includes a funnel section (i.e. the opening functions as a funnel as it constricts the area through which the treats may pass).

9. Regarding claim 30, Wang discloses a lip (34, 44) at a perimeter of the aperture and the cap being removably retained within the aperture by overlaying a portion of the outer (circumferential) surface of the cap.

Claim Rejections - 35 USC § 103

Art Unit: 3644

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 15 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang as applied to Claim 13 and further in view of McEvoy, IE 82913.

12. Wang discloses the invention with the exception of a sinuous raised feature on the outside surface as taught by McEvoy (16). It would have been obvious to one having ordinary skill in the art to use the sinuous raised feature as taught by McEvoy with the apparatus of Wang so as to provide a more varied and interesting rolling pattern for the ball.

13. Claims 13, 19, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jager, US 2004/0244719 in view of Rucker, US Patent 6,634,318.

14. Jager discloses a treat ball comprising a generally spheroid outside surface (Figure 6) having an interior compartment and an aperture (66). However, Jager does not disclose the use of a removable edible cap. Rucker teaches the use of an edible cap (400) for insertion into an aperture in a treat dispensing apparatus so as to allow for longer enjoyment of the apparatus. It would have been obvious to one having ordinary skill in the art at the time of the invention to use the cap as taught by Rucker with the apparatus of Jager so as to prolong the time before the animal is able to access the treats thereby increasing the enjoyability of the apparatus.

Conclusion

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15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note documents listed on attached Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is (571)272-6909. The examiner can normally be reached on Monday-Thursday 10:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/
Primary Examiner, Art Unit 3644
kss